

# News from Ed Markey

**United States Congress**

**Massachusetts Seventh District**

**FOR IMMEDIATE RELEASE**

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**May 12, 2004**

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## **Markey Preparing Legislation to Eliminate Regulatory Chaos Regarding Offshoring of Personal Data**

*Agency Responses to Markey Inquiries Disclose Disagreements,  
Confusion About Whether Companies Are Obligated to Inform  
Consumers Whenever Personal Information is Sent Offshore*

**WASHINGTON, D.C.** -- Representative Edward J. Markey, a senior Democratic Member of the House Energy and Commerce Committee, and the Co-Chair of the Congressional Privacy Caucus, today announced that he will soon be introducing legislation designed to clarify the rights and responsibilities of companies, their regulators and consumers regarding the protection of privacy in global commerce. As an example of what Markey referred to as the “regulatory chaos” surrounding this issue, he released a letter from the Federal Trade Commission (FTC) that provided a significantly different view than that earlier set forth by the Internal Revenue Service (IRS) on the obligations of businesses to inform consumers whenever they propose to offshore the processing or analysis of consumer financial information or tax returns. The FTC letter was prepared in response to an earlier inquiry by Rep. Markey, a leading advocate of strengthening privacy protections.

“Federal regulators can’t seem to agree on whether or not current law requires tax preparers to inform their clients if they are offshoring the preparation of a tax return to India, Pakistan, or some other country,” said Rep. Markey, adding, “This confusion only highlights the need for the Congress to step in and adopt new legislation clarifying the right of American consumers to prevent their most sensitive financial, tax, or medical information from being sent overseas to countries that may have little or no enforceable privacy protections.

“Right now, consumers face a regulatory black hole when their families’ most sensitive financial, medical, and tax return information is offshored to foreign countries. The U.S. company that offshores the data has the responsibility to protect the security and privacy of this data, but federal regulators have no idea whether they are actually doing so and

little or no ability to influence the actions of their offshore affiliates or corporate partners. I am preparing legislation to close down these privacy loopholes.”

In the letter Rep. Markey released today, FTC Chairman Timothy J. Muris stated that under two key financial services laws, the Gramm-Leach-Bliley Act (GLBA) and the Fair Credit Reporting Act (FCRA), “financial institutions do not have to disclose to consumers that they are sharing nonpublic personal information with service providers” – including those located overseas. The FTC noted, however, that a U.S. financial institution might be subject to possible enforcement action if an offshore service provider breached privacy protections for U.S. consumers.

In contrast, in an April 6, 2004 letter to Rep. Markey, IRS Commissioner Mark W. Everson, stated that “I believe and agree that the GLBA would require a [tax] return preparer to disclose to a client that a foreign person may help prepare a client’s return; however the interpretation and enforcement of those rules (including the form of any required disclosure of returns and return information) lie with the Federal Trade Commission.” The IRS Chief further noted that while current tax regulations “permit a tax preparer to disclose, without a client’s consent, information received from the client to a second tax return preparer that provides auxiliary services in preparing the client’s return” that the IRS is preparing to revise these regulations.

Both agencies also indicated that while they have some legal authority to oversee some of the U.S. companies that may be offshoring financial or tax return information abroad, they don’t actually conduct inspections or examinations to determine whether U.S. companies are establishing and enforcing effective privacy policies for data transmitted offshore. IRS Commissioner Everson noted that “The IRS does not routinely review the security policies and procedures return preparers use to protect taxpayers’ personal information.” FTC Chairman Muris added that the FTC was unable to provide any specific information about the privacy policies and practices of the companies within its jurisdiction, noting that “The numerous and varied entities subject to the Commission’s jurisdiction do not report this information to the Commission, nor would it be practical to require them to do so.”

The FTC letter also indicated that “Thus far, the agency has not brought a law enforcement action based on the failure of a service provider – here or overseas – to protect information. The Commission has conducted and continues to conduct nonpublic investigations of companies compliance with the Privacy Rule and the Safeguards Rule; as part of these investigations, the Commission routinely asks about companies’ relationships with service providers.”

In contrast, Chairman Muris reported in his letter to Rep. Markey that with respect to off-shore telemarketers, it has brought enforcement actions “in approximately 50 consumer protection cases and provided redress to thousands of United States and foreign consumers.” These included a 2001 case against a foreign-based telemarketer who “cold-called thousands of United States consumers in an attempt to sell them bogus identity theft protection services and supposed advance-fee, low-interest credit cards.” Under a

settlement agreement reached in 2002, the telemarketer was forced to pay over \$111,000 in consumer redress.

With respect to on-line privacy, the FTC reported that its rule to implement the Children's Online Privacy Protection Act of 1998 (COPPA) "does not prohibit website operators from disclosing children's personal information to off-shore companies for processing." At the same time, the FTC reported that "Foreign-run websites that are directed to children in the United States or knowingly collect information from children in the United States must also comply with COPPA."

Rep. Markey concluded, "It is becoming increasingly clear that both American jobs and our privacy are being shipped offshore, and federal regulators aren't doing nearly enough to stop it. In effect, regulators are telling consumers to 'check your privacy at the shore.' We need new legislation to stop this dangerous trend from continuing."

Additional information about Rep. Markey's activities in the area of offshoring are available on the Web at <http://www.house.gov/markey>

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